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U.S. COURTS
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CAMERON S. BUCKE
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Attorneys for Trustee, Bernie R. Rakozy

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re:

AUTOMATED STRUCTURES, INC.,
82-0492850

Debtor.

Case No. 96-03201

MOTION FOR APPROVAL
OF COMPROMISE

Pursuant to Bankruptcy Rule 9019, the Trustee moves the court for approval of a compromise between the above bankruptcy estate and Dougal Construction Company ("Dougal") whereby Dougal shall pay \$4,500.00 to the estate in full satisfaction of an account receivable in the amount of \$8,201.97. The compromise reflects that Dougal will likely be entitled to a setoff in the principal amount of \$3,114.71 plus interest, costs, and attorney fees as a result of a lien filed by Franklin Building Supply. In support of the motion the Trustee alleges as follows:

1. The Debtor filed a Chapter 7 Petition on or about December 13, 1996. The filing was one week after the Chapter 7 bankruptcy petition of Monterey Homes, Inc., a related corporation.

2. At the time of filing the bankruptcy, the Debtor's record showed an account receivable in the amount of \$8,201.97 due from Dougal arising out of the construction of a home located on Lot 25, Block 5, Silverwood Subdivision No. 3, Ada County, Idaho. (Exhibit A attached.) Dougal was the general contractor on that house and the Debtor was a subcontractor. The Debtor provided prefabricated wall units and installation labor used in the construction of the home. The Debtor provided materials purchased from Franklin Building Supply, the charges for which were included in the gross billing and account due from Dougal. (Affidavit of Jerry Smith.) Franklin Building Supply has filed a materialman's notice of claim of lien recorded in Ada County against Lot 25, Block 5, Silverwood Subdivision No. 3 in the amount of \$3,114.71. (Exhibit B. Attached.)

3. Franklin Building Supply billed the materials to Monterey Homes, Inc. rather than the Debtor ASI because ASI did not have an account with Franklin and Monterey Homes was a closely related corporation. Nevertheless the goods sold and used in Lot 25, Block 5, Silverwood Subdivision No. 3, by Franklin Building Supply, were the same materials used by the Debtor and included in the billing to Dougal. (Affidavit of Jerry Young.) Based upon that evidence, the Trustee believes that Dougal would be entitled to setoff, pursuant to 11 U.S.C. § 553(a) for the lien now encumbering the property by Franklin Building Supply in the amount of \$3,114.73, plus interest, costs and attorney fees.

4. The Trustee has agreed, subject to court approval, to accept \$4,500.00 from Dougal Construction in full satisfaction of the account receivable of \$8,201.97. The discount of \$3,702.00 reflects the setoff of the Franklin Building Supply lien in the amount of \$3,114.71 plus interest, costs and attorney fees, which may be claimed by Franklin Building Supply.

5. The Trustee submits that the proposed compromise is in the best interest of the estate and creditors. It is not likely that the Trustee could recover substantially more than the proposed compromise if the claim were litigated. The Trustee recommends that the court approve the compromise which would save the estate additional costs and expenses of litigation.

Dated this 29 day of May, 1997.

EVANS, KEANE LLP

By Jed W. Manwaring
Jed W. Manwaring, Of the Firm
Attorneys for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of May, 1997, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Automated Structures, Inc.
5903 E. Powerline Road
Nampa, ID 83687

☒ U.S. Mail
☐ FAX
☐ Overnight Delivery
☐ Hand Delivery

Harold Q. Noack, Jr.
Attorney at Law
733 N. 7th St.
P.O. Box 875
Boise, ID 83701

☒ U.S. Mail
☐ FAX
☐ Overnight Delivery
☐ Hand Delivery

Bernie R. Rakozy, Trustee
P. O. Box 1738
Boise, ID 83701

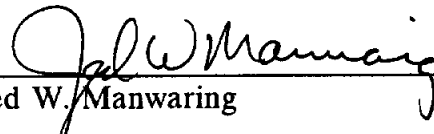
☒ U.S. Mail
☐ FAX
☐ Overnight Delivery
☐ Hand Delivery

U.S. Trustee
P. O. Box 110
Boise, ID 83701

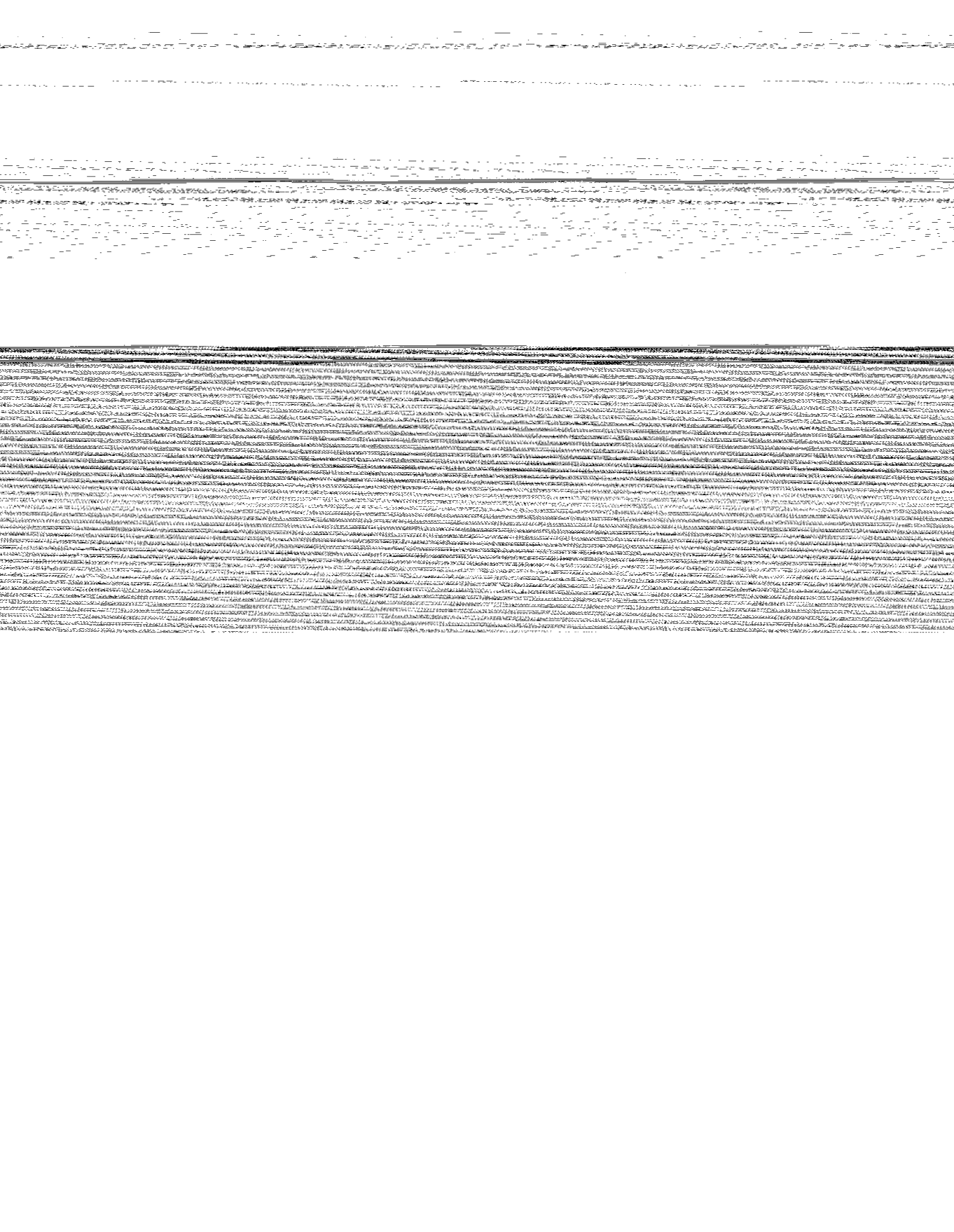
☒ U.S. Mail
☐ FAX
☐ Overnight Delivery
☐ Hand Delivery

Dougal Construction
3175 Sweetwater Dr.
Boise, Idaho 83716

☒ U.S. Mail
☐ FAX
☐ Overnight Delivery
☐ Hand Delivery



Jed W. Manwaring



11/29/96

Dougal Construction Co.
3175 Sweetwater Dr.
Boise, Idaho 83716

Dougal Construction
Co.

11/29/96

10/9/96	39	Invoice	9,081.94			
10/24/96	719	Payment	-6,500.00			
				2,581.94	39	2,581.94
10/9/96	108	Invoice		5,620.03	108	5,620.03

Current	31-60	Over 60		
0.00	8,201.97	0.00	8,201.97	8,201.97

281-47

LABORER'S AND MATERIALMAN'S NOTICE AND CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that FRANKLIN BUILDING SUPPLY CO., Claimant herein, at the request of Monterey Homes, Inc., did on the 24th day of September, 1996, begin to sell, furnish and deliver building materials and supplies to and commence labor for a residential building until the 27th day of September, 1996, which was the last day on which said materials and supplies were so sold, furnished and delivered and labor provided, to be used for the construction, alteration and/or repair of a certain building, improvement, structure and/or dwelling upon the following described lands situate in Ada County, Idaho, to-wit:

Lot 25, in Block 5, of Silverwood Subdivision No. 3, according to the Official Plat thereof, filed in Book 71, of Plats at pages 7312 and 7313, Official records of Ada County, Idaho.

The building materials and supplies sold, furnished and delivered and the labor performed were used in the construction and/or alteration and repair of the building(s) and improvements above-mentioned.

The name of the owner(s) and/or reputed owner(s) of the lands, buildings and improvements to be charged with the lien are Michael E. and Carleen Tarnaw. The building materials and supplies so sold, furnished and delivered and the labor provided amounted in value to the sum of \$3,114.71, plus interest, and no part of this amount has been paid, and there are no just credits or offsets except \$0.00. There is a balance due and unpaid for such materials and supplies and labor to this Claimant over and above all just credits and offsets, of \$3,114.71, plus interest and attorney's fees and costs, for which last named sum the above-named Claimant claims a lien on the said building, structures, improvements and the land above described.

DATED this 10th day of December, 1996.

FRANKLIN BUILDING SUPPLY CO.

By [Signature]
Agent or Title: President

STATE OF IDAHO
County of Ada

R. L. Liars, being first duly sworn upon oath deposes and says: That he is an agent or officer of the above-named Claimant herein and makes this verification for and on its behalf; that he has read the foregoing NOTICE AND CLAIM OF LIEN, knows the contents thereof and believes the same to be true and just.

SUBSCRIBED AND SWORN to this 10th day of December, 1996.

[Signature]
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 11/05/97

STATE OF IDAHO
County of Ada

On this 10th day of December, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared R. L. Liars, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Signature]
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 11/05/97

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

FRANKLIN BUILDING SUPPLY

'96 DEC 13 PM 3 06
FEE 3.00 DEP [Signature]
RECORDED AT THE REQUEST OF